SERVED: January 26, 1993

NTSB Order No. EA-3770

UNITED STATES OF AMERICA
NATIONAL TRANSPORTATION SAFETY BOARD
WASHINGTON, D.C.

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D.C.
on the 5th day of January, 1993

THOMAS C. RICHARDS, Administrator, Federal Aviation Administration, Complainant, v. TODD A. GROSZER Respondent.	Docket SE-10323

OPINION AND ORDER

Respondent has appealed from the oral initial decision of Administrative Law Judge William E. Fowler, Jr., issued on October 19, 1990, following an evidentiary hearing.[1] The law judge affirmed an order of the Administrator suspending respondent's private pilot certificate for 180 days.[2] We deny

[1]The initial decision, an excerpt from the hearing transcript, is attached.

[2]Respondent apparently has since obtained a commercial pilot

the appeal.

The Administrator charged respondent with violating 14 C.F.R. 91.31(a) and 91.9 in connection with his October 23, 1988 flight from Marquette, MI to Milwaukee, WI. The flight ended in a crash landing just short of the runway; ice was found on the aircraft's wings.[3] The law judge found, as the Administrator had alleged, that respondent, as pilot in command, violated § 91.31(a) in flying into "known icing conditions," when the aircraft's manual stated: "FLIGHT IN KNOWN ICING CONDITIONS PROHIBITED." See Exhibit A-3, at page 2-10. In declining to wait for takeoff until the weather improved, respondent was found to have been careless, in violation of § 91.9.

On appeal, respondent contends that the law judge's §§ 91.31(a) and 91.9 findings of fact and law are not supported by a preponderance of the reliable, probative, and substantial evidence, and are not in accord with precedent and policy. Respondent believes that his action was consistent with the

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certificate, and it would be any upgraded certificate that would be suspended, should the initial decision be affirmed.

[3]§ 91.31(a), Civil aircraft flight manual, marking, and placard requirements (now 91.9), provided:

> Except as provided in paragraph (d) of this section, no person may operate a civil aircraft without complying with the operating limitations specified in the approved Airplane or Rotorcraft Flight Manual, markings, and placards, or as otherwise prescribed by the certificating authority of the country of registry. . . .

§ 91.9 (now 91.13) provided:

> No person may operate an aircraft in a careless or reckless manner so as to endanger the life or property of another.

weather briefing he received. Respondent further argues that the sanction sought and imposed -- a 180-day suspension -- is excessive and inconsistent with precedent.

There is no doubt that respondent had a thorough weather briefing, and that respondent apparently took the matter seriously, returning to the Flight Service Station at least three times to clarify matters, and rejecting his first choice of destinations (Saginaw), as too risky in light of the weather. A SIGMET (significant meteorological) bulletin, SIGMET Golf 1, in effect at the time of respondent's departure, indicated the potential for occasional, moderate to severe icing over a broad area that included Marquette, Milwaukee, and the area in between, at altitudes between 3,000 to 11,000 feet. Tr. at 11. (Respondent planned to fly at 4,000 feet.)

Respondent was also informed of various PIREPs (pilot reports) indicating icing or lack of it at various altitudes and locations in the area of his proposed flight, and he spoke to a pilot who had landed at Marquette 45 minutes previously from an altitude of 12,000 feet, and who had experienced no structural icing. See Exhibit R-8 Deposition of Jack A. Blackwell. Respondent did not (and was not required to) take the flight service weather briefer's advice that respondent delay his flight pending better weather.[4]

[4]Although the evidence on this point was contradictory, with respondent testifying that Mr. Cothern told him no such thing, the law judge accepted Mr. Cothern's testimony, and respondent offers no grounds to overturn this credibility finding.

The basis of the Administrator's complaint is respondent's takeoff at Marquette. That is, respondent allegedly violated the cited regulations when he took off with SIGMET Golf 1 in effect. As this position is supported in precedent (see discussion infra) and is supportable as a matter of logic, we need not and will not address respondent's contention that the true reason for this proceeding is the crash and that somehow the FAA failed in its burden by failing to determine its cause. It is of no moment here whether the crash was caused by the ice buildup or by wind shear, as respondent alleges.[5]

Similarly, the replacement of Golf 1 with Golf 2 10 minutes after respondent's takeoff is irrelevant. The question raised by the complaint is respondent's judgment in taking off. That judgment may not be justified in hindsight.[6]

Respondent argues that he did not take off in known icing conditions. He believes that, despite the SIGMET, he was entitled to rely on those 3 of 4 PIREPs that indicated no icing at the altitude and along the route he planned. We cannot agree. It is not within respondent's discretion to pick and choose between the SIGMET and anecdotal PIREPs.[7] That the SIGMET warned

[5]Nor need we determine when respondent encountered ice.

[6]Golf 2 moved the area of the storm northward so that only half of respondent's route (from Green Bay northward) remained in the warning area. Even were it relevant, respondent would have been flying in the icing area described by Golf 2 for approximately 1 hour.

[7]Respondent's reliance on Mr. Blackwell's experience is, in any case, misplaced. As the Administrator notes, the routes were not the same, and weather conditions could well have changed for

against "occasional" icing does not make the icing any less "known." Moreover, the icing threat need not be blanketing the entire area at every altitude for it to be either known or dangerous, nor does the lack of extensive PIREPs at respondent's planned altitude and along the planned route legitimize his action.

While PIREPs are valuable in planning (and are used in developing the SIGMETs), they are only one factor to consider. We, thus, do not agree with respondent's claim that a pilot report will establish the absence of icing with "near certainty." Appeal at 16. For similar reasons, pilots may not, in the face of icing forecasts for an area, reasonably rely on anecdotal information regarding freezing levels. Weather reporting is not the exact science that respondent's theory would have us assume.

These conclusions are consistent with our decisions in Administrator v. Bowen, 2 NTSB 940 (1974) and Administrator v. Irmisch, 2 NTSB 2409 (1976), despite respondent's belief to the contrary. Indeed, Bowen holds that the lack of a PIREP forecasting icing in a particular area does not excuse the disregarding of forecast data. We stated that "known" does not mean a near-certainty of icing conditions, only that icing conditions are being reported or forecast. Bowen at 943. There can be no debate that, here, icing conditions were forecast when respondent departed Marquette. In light of this analysis, we see

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the worse in the time that had elapsed between Blackwell's arrival and respondent's departure.

no basis in respondent's appeal to reverse the law judge's findings.[8]

Finally, respondent contends that the 180-day suspension imposed is not consistent with precedent, and he notes that in Bowen and Irmisch suspensions of 15 and 60 days, respectively, applied. The Administrator replies that those cases may not properly be used as precedent because the sanctions proposed by the Administrator (30 days and 6 months) were reduced by the law judges and were not appealed by the Administrator. We agree. Moreover, we must affirm the Administrator's sought sanction when we affirm the entirety of the Administrator's order, absent clear and compelling evidence that warrants a reduced sanction. Administrator v. Muzquiz, 2 NTSB 1474 (1975). Respondent has offered no such evidence.

[8]For the reasons we have discussed, we also see no basis in respondent's contention (Appeal at 19) that the law judge was misled by Inspector Martin's testimony.

ACCORDINGLY, IT IS ORDERED THAT:

1. Respondent's appeal is denied;

2. The 180-day suspension of respondent's airman certificate shall begin 30 days from the date of service of this order.[9]

VOGT, Chairman, COUGHLIN, Vice Chairman, LAUBER, HART and HAMMERSCHMIDT, Members of the Board, concurred in the above opinion and order.

[9]For the purposes of this order, respondent must physically surrender his certificate to an appropriate representative of the FAA pursuant to FAR § 61.19(f).